July 17, 2007

Re: MB Docket No. 07-57 – Notice of Proposed Rule Making

To Whom It May Concern:

I am writing this letter in response to the Notice of Proposed Rule Making released June 27th, 2007 in which you request comments related to the SDARS Report and Order that states:

> Transfer. We note that DARS licensees, like other satellite licensees, will be subject to rule 25.118, which prohibits transfers or assignments of licenses except upon application to the Commission and upon a finding by the Commission that the public interest would be served thereby. **Even after DARS licenses are granted, one licensee will not be permitted to acquire control of the other remaining satellite DARS license. This prohibition on transfer of control will help assure sufficient continuing competition in the provision of satellite DARS service.**

Firstly, it is my opinion that the last two lines highlighted above should be stricken from the previous agreement or ignored outright. It is the FCC's duty to review all applications for license transfer. In the review, key items that are emphasized include public interest, existing competition, and future competition. This portion of the review automatically ensures that there will be existing competition, meaning these last two lines of the clause are basically redundant in their effects.

Secondly, the clause fails to allow for alternate forms of competition outside of the DARS realm. As many comments and letters have suggested, the thriving terrestrial radio industry, wildly popular iPods and MP3 players, internet radio, the quickly growing HD radio, and WIFI radio are all forms of competition to satellite radio and are not accounted for in this ruling.

Finally, and most importantly, when the FCC was auctioning off satellite spectrum in 1997, it decided to auction only half of the spectrum available to SDARS. As we all know, half went to XM Satellite Radio and the other half to Sirius Satellite Radio. However, half of the available SDARS spectrum is still available. This portion of the spectrum could conceivably be awarded to another satellite radio provider, such as Primosphere or ICO Satellite Services.

For opponents to the rule change as well as the merger, one of the biggest arguments is that there is "significant barrier to entry" into the satellite radio business. Primosphere has already submitted filings to the FCC stating that they have already paid for satellite launches and could be up and running within five (5) years. They state that an FCC mandate giving Primosphere rights to a portion of XM/Sirius's satellites would speed this process up significantly, although renting/leasing other satellite signals would work just as well until they completed the launch of their own.

In conclusion, the ruling in question is redundant, severely outdated, and provides for no other entry into the SDARS spectrum. The ruling should be either deleted entirely or just simply ignored. There are many laws all over the United States that are ignored for those exact reasons (for instance,

did you know that cattle rustling is still an offence punishable by hanging in the state of Texas?)

Sincerely submitted for your consideration,

Brian D. Rayl